

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-08-218 CV

IN RE WILLIAM DICKERSON

Original Proceeding

OPINION

William Dickerson filed a petition for writ of mandamus to compel the trial court to vacate an order denying a motion to enter judgment nunc pro tunc. Dickerson asks this Court to direct the trial court to correct what he contends are clerical errors in the judgment. We deny the petition for writ of mandamus.

The trial court signed its judgment in 2001 and corrected the name of one of the plaintiffs through judgment nunc pro tunc in 2002. The judgments signed by the trial court correctly recite the jury's responses to the jury questions, but Dickerson contends the decretal clauses do not accurately implement the jury's verdict. In 2004, the trial court denied a bill of review filed by Dickerson. In 2006, counsel for the real parties in interest appeared before

the trial court and announced that the parties agreed to the entry of a judgment nunc pro tunc that would reduce the amount of the judgment against Dickerson. In 2008, the trial court conducted hearings on Dickerson's motion to enter judgment nunc pro tunc. The mandamus record does not establish that the trial court orally rendered a judgment that is contrary to the written judgment. The trial court did not find that the written judgment entered by the trial court failed to accurately reflect the judgment actually rendered by the trial court.

Dickerson contends the trial court erred in entering a judgment that was inconsistent with the jury's verdict, and argued both to the trial court and to this Court that the trial court did not intentionally sign a judgment that made Dickerson personally liable for damages found by the jury to have been caused by the conduct of a co-defendant. "A judgment is rendered when the trial court officially announces its decision – either in open court or by written memorandum filed with the clerk – on the matter submitted for adjudication." *Wittau v. Storie*, 145 S.W.3d 732, 735 (Tex. App.--Fort Worth 2004, no pet.). Once a trial court loses plenary power over a judgment, only clerical errors may be corrected by judgment nunc pro tunc. *Id.* (citing *Escobar v. Escobar*, 711 S.W.2d 230, 231 (Tex. 1986)). "When a prior judicial determination is evidenced, but the signed judgment inaccurately reflects the true decision of the court, the error is clerical and may be corrected." *Andrews v. Koch*, 702 S.W.2d 584, 586 (Tex. 1986). Although the question of whether a purported error in a judgment is judicial or clerical is a question of law, we must give deference to the trial

court's factual determination regarding whether it previously rendered judgment and the judgment's contents. *Escobar*, 711 S.W.2d at 232. If the written judgment accurately reflects the judgment actually rendered by the trial court, the written judgment cannot be corrected through judgment nunc pro tunc signed after the trial court's plenary power expires. *Id.* Because the trial court could find that the judgment entered accurately reflected the judgment rendered in the case, it could deny Dickerson's motion for entry of judgment nunc pro tunc.

Mandamus relief is appropriate only if the court clearly abused its discretion and the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). After reviewing the mandamus record and petition, we conclude that the relator failed to establish his entitlement to mandamus relief. Accordingly, the petition for writ of mandamus is denied.

PETITION DENIED.

STEVE McKEITHEN
Chief Justice

Submitted on May 29, 2008
Opinion Delivered June 26, 2008

Before McKeithen, C.J., Gaultney and Horton, JJ.

DISSENTING OPINION

I respectfully dissent. The trial judge signed two post-answer default “final” judgments on the same day in the same case against Dickerson: one was apparently based on a directed verdict, the other on a jury verdict. The judgment based on the jury verdict contains the jury’s findings. That judgment reflects the jury found \$87,000 in exemplary damages against Dickerson but no actual damages. Yet the judgment ordered the plaintiffs to recover from Dickerson (and the other defendants) \$668,300 in actual damages and \$387,000 in exemplary damages. The other judgment -- against Dickerson alone -- ordered that plaintiffs recover \$668,300 from him.

Also in the mandamus record are two documents labeled “Final Judgment Nunc Pro Tunc,” both dated January 3, 2002. Like the first two judgments, one is a directed-verdict judgment and the other a jury-verdict judgment. The damage allocations are the same as in the first judgments. Each judgment recites that Dickerson filed an answer but did not appear at trial. In October 2006, the trial court signed a judgment nunc pro tunc order that apparently was in conformity with the jury’s findings. The court then withdrew that order, seemingly in part because of a bankruptcy stay. The trial judge subsequently signed another nunc pro tunc order, and then also set that one aside.

The two “final” 2002 judgments against Dickerson of the same date in the same case apparently remain in place, although the directed-verdict (findings-of-fact) judgment does

not dispose of all of the parties. “Only one final judgment shall be rendered in any cause except where it is otherwise specifically provided by law.” TEX. R. CIV. P. 301. If there is no final order or judgment, the trial court retains authority to modify, correct, or reform the judgment. *See Fruehauf Corp. v. Carrillo*, 848 S.W.2d 83, 84 (Tex. 1993) (“A trial court has plenary power over its judgment until it becomes final.”); *see Crown Constr. Co. v. Huddleston*, 961 S.W.2d 552, 559-60 (Tex. App.--San Antonio 1997, no pet.) (Trial court had power to correct, modify, reform, or vacate judgment as long as it retained plenary power.). The parties and the majority assume the judgment reciting the jury verdict and disposing of all parties is the final judgment. In my view, the conflicts in and between the two documents indicate no “final” judgment has yet been signed. *See Dispensa v. Univ. State Bank*, 951 S.W.2d 797, 801 (Tex. App.–Texarkana 1997, pet. denied) (“A judgment that lacks certainty and that is not sufficiently definite in the relief it grants is not a final judgment.”). We should instruct the trial court to sign one final judgment.

Even if the judgment on the jury verdict is a final judgment, a court has inherent power to correct clerical errors in its judgment. *See Knox v. Long*, 152 Tex. 291, 257 S.W.2d 289, 291-93 (1953), *overruled on other grounds by Jackson v. Hernandez*, 155 Tex. 249, 285 S.W.2d 184, 191 (1955)). The distinction between clerical and judicial errors often is not clear, but I believe the ultimate question is whether a mistake occurred in translating the trial judge’s true decision into writing. *See Andrews v. Koch*, 702 S.W.2d 584, 585-86

(Tex. 1986) (“[I]n this case, the probate court was merely correcting the signed judgment which inaccurately reflected the true decision reached.”). In *Koch*, the Court explained that when it is proven that a judgment does not reflect the court’s true decision, the court may correct the written judgment to conform to the prior judicial determination. *Id.* at 586. One author has explained the case-law in this way:

A review of the cases reveals a great disparity between theory and practice, because the rules seem to assume that mistakes are inherently either judicial errors in rendition or clerical errors in entry, and that the court’s task is simply to classify them correctly. In reality, the courts seem to consider not only the nature of the alleged error but also the character and persuasiveness of the proof that a mistake really occurred in translating the judge’s intentions into writing.

. . . .

The cases are difficult to harmonize, but most of them can be explained by this rule: If clear and convincing evidence proves that the court’s true intent was incorrectly translated into writing, the error is clerical and may be corrected *nunc pro tunc*.

David Peeples, *Trial Court Jurisdiction and Control Over Judgments*, 17 ST. MARY’S L.J. 367, 385, 389 (1986).

The judgment here awards damages the judgment itself reflects the jury did not find. Plaintiff’s trial attorney acknowledged the error, and the parties agreed in 2006 to a *nunc pro tunc* order correcting the mistake. Although the court later set aside that order, the trial judge apparently agreed with the parties then that his true intention was not correctly translated into the January 3, 2002, writing. The law allows a correction under these circumstances.

The trial court has the power to make its records reflect its true ruling. We should issue the writ of mandamus and instruct the trial court to sign one final judgment correcting the error to reflect the jury verdict.

DAVID GAULTNEY
Justice

Dissent Delivered
June 26, 2008